

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Ruppert

FILE: B-221792 **DATE:** May 9, 1986
MATTER OF: The W.H. Smith Hardware Company

DIGEST:

1. A contracting officer's determination concerning price reasonableness is a matter of administrative discretion that the General Accounting Office will not question unless the determination is clearly unreasonable or there is a showing of possible fraud or bad faith.
2. An agency properly may cancel an invitation for bids after bid opening where it reasonably determines that all otherwise acceptable bids received are at unreasonable prices. Moreover, the determination may be based in part on a nonresponsive bid price that is 16 percent less than the next-low bid.
3. Past procurement history is only one factor to be considered in a determination of price reasonableness. Moreover, even when the apparent low responsive bid is in line with the agency's most recent purchase of the same item, if the quantities purchased in the past were considerably less than those currently being procured, the contracting officer reasonably may assume that lower prices will be available for larger quantities.

The W. H. Smith Hardware Company protests the cancellation of invitation for bids (IFB) No. DLA700-85-B-1509, issued by the Defense Logistics Agency's Defense Construction Supply Center. The protester objects to the agency's consideration of a nonresponsive, lower bid in determining that all other prices were unreasonable. Smith Hardware also contends the agency's decision to cancel the

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IFB because of unreasonable prices is improper because past purchases of the equipment covered, i.e., nonmetallic hose assemblies, were made at \$198.50 each in September 1985 and at \$225.90 each in March 1984. (Smith Hardware does not indicate the source for these figures, and the solicitation indicates that the most recent purchase was at \$225.70 each.) Smith states that its own bid was within the range of these purchases.

We deny the protest.

DLA issued the IFB on August 30, 1985 as a 100 percent small business set-aside. It called for a quantity of 600 hose assemblies, national stock number 4720-00-461-3749. The agency received eight bids at the opening on October 1. The two low bidders were Durodyne and Smith Hardware. Durodyne bid \$185 per unit for each of the 12 line items, representing different quantities for delivery to three different installations on an f.o.b. destination basis, and \$750 for first article testing, for a total price of \$111,750. Smith Hardware bid \$213.74 for line items 1-4 and 9-12, \$218.74 for line items 5-8, and \$799.98 for the first article for a total price of \$129,793.98. The agency asked Durodyne to verify its prices, which it did.

Despite the fact that it had previously competed as a small business, Durodyne, apparently by mistake, checked a solicitation clause indicating that it was not small and would not furnish supplies manufactured or produced by a small business concern in the United States. The agency subsequently rejected the bid as nonresponsive. Since Smith Hardware's bid ranged in price from \$28.74 to \$33.74 more per unit, resulting in a price that was \$18,043.98 (16.1 percent) more than Durodyne's, the contracting officer determined all otherwise acceptable bids were unreasonable as to price and canceled the IFB on January 23, 1986.

Smith Hardware contends that there was no compelling reason to cancel the IFB and that the contracting officer improperly considered Durodyne's nonresponsive bid in determining that the remaining bid prices were unreasonable. In its comments on the agency report, the protester argues that a resolicitation will afford Durodyne an unfair second chance to submit a bid. Smith Hardware also argues that the cancellation was not in accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(6) (1984), since there were three bids from firms other than Durodyne that were less than the previous purchase price for

the hose assemblies. The regulation permits cancellation when "all otherwise acceptable bids" are at unreasonable prices. The protester believes the regulation is not applicable here in view of previous prices that DLA has paid for the hose assemblies.

Because of the potential adverse impact on the competitive system of canceling an IFB after bid prices have been exposed, a contracting officer must have a compelling reason for such action. FAR, 48 C.F.R. § 14.404-1(a)(1). A determination of price reasonableness involves broad discretion on the part of the contracting officer, and our Office will not disturb it absent a showing of unreasonableness or of possible fraud or bad faith on the part of contracting officials. Security Fence Co., B-218587, July 22, 1985, 85-2 CPD ¶ 67; Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 CPD ¶ 267. A determination of price reasonableness properly may be based on a comparison with such things as a government estimate, past procurement history, current market conditions, or any other relevant factors, including the price submitted by an otherwise ineligible large business. See Flagg Integrated Systems Technology, B-214153, Aug. 24, 1984, 84-2 CPD ¶ 221.

In our view, the agency here had a compelling reason to cancel the IFB based upon unreasonable prices. Smith Hardware's bid was 16.1 percent more than Durodyne's. Our Office has held that the bid of a nonresponsive bidder is relevant to the determination of what is a reasonable price. McCarthy Manufacturing Co., B-186550, Feb. 17, 1977, 77-1 CPD ¶ 116. In an analogous situation, we held that a 9.6 percent difference between the bid of a large business and the lowest offer by a small business in a total small business set aside was sufficient reason to cancel and resolicit on an unrestricted basis. Saratoga Industries--Reconsideration, B-202698.2, Jan. 22, 1982, 82-1 CPD ¶ 47.

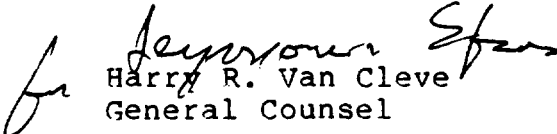
The contracting officer in this case states that because Durodyne had previously supplied the hose assemblies to the government as a small business, had verified its price, and had confirmed that the product would conform to specifications, he believed that the Durodyne bid represented a legitimate basis for establishing a reasonable price. The contracting officer argues that the government should not be required to pay \$18,000 more than what was determined to be a reasonable price solely because of Durodyne's mistake in completing the clause concerning its small business status.

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We agree. Even though the IFB indicates that the agency's most recent purchase of the hose assemblies was at a unit price of \$225.70, past purchases, as indicated above, are only one factor to be considered in a determination of price reasonableness. Moreover, the most recent purchase price was based upon a quantity of 250, whereas the subject IFB called for more than 600 units. The contracting officer could reasonably assume that the agency might receive a lower price based on increased quantities. After comparing Durodyne's price and the past purchase price, we believe the contracting officer reasonably concluded that all otherwise acceptable bids were at unreasonable prices. Moreover, Smith Hardware has not shown possible fraud or bad faith.

We conclude that the contracting officer did not abuse his discretion in canceling the IFB. The protest is denied.


Harry R. Van Cleve
General Counsel